

There are several instances, in which by our Acts of Assembly costs in Chancery have been given to one party or the other.<sup>1</sup> Thus by Art. 16, sec. 114,<sup>2</sup> (1820, ch. 161, sec. 8,) in exceptions to answers, the Court may award the costs of the exception, and the order thereon, to the party prevailing, including a fee to the solicitor or attorney. So under Art. 16, sec. 106,<sup>3</sup> a non-resident plaintiff, failing to answer interrogatories propounded by defendant, is liable to have his bill dismissed with costs. Under sec. 102,<sup>4</sup> on the overruling of any plea or demurrer, or its being withdrawn without leave of the Court, the party so pleading or demurring is to pay the opposite party ten dollars and costs, and be in contempt till they are paid. \*In *Staines v. Morris*, 1 Ves. & Bea. 15, Lord Eldon said, "it is in **200** many cases very hard that costs should follow the event of the suit, yet all his experience had persuaded him that it was much to be wished that the course of the Court was so. Certainly, however, that was not the present course of the Court. Where there is a fair case for consideration, it is not the course to visit the party who fails with costs." When this Statute speaks of the "discretion of the Chancellor, it must not be supposed that Courts of Equity, even in England, are not governed by definite principles in awarding costs or otherwise, but only that there is no inflexible rule as to costs, as at common law," see *Clagett v. Salmon*, 5 G. & J. 314. The inclination of our courts is to make costs follow the event of the suit, see *Alexander's Chan. Prac.* 208; 5 Md. 614, Append. *Doub v. Mason*; *Thomas' Admr. v. Visitors of Fredk. Co. School*, 9 G. & J. 115.<sup>5</sup> And *prima facie*,

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<sup>1</sup> A person under attachment for violating an injunction, on establishing his innocence of the charge, shall have his costs against the person complaining. Code 1911, Art. 16, sec. 80.

Under Equity Rule 13 unnecessary recitals of documents, and impertinent, scandalous and irrelevant matter in equity pleadings may be stricken out at the cost of the party inserting the same. Code 1911, Art. 16, sec. 153.

Where a bill is found defective for want of parties upon hearing on this objection, plaintiff may amend upon paying cost of the amendment. Equity Rule 35, (Code 1911, Art. 16, sec. 185).

<sup>2</sup> Code 1911, Art. 16, sec. 180.

<sup>3</sup> But see now Equity Rule 24, (Code 1911, Art. 16, sec. 165.)

<sup>4</sup> Code 1911, Art. 16, sec. 163. The costs in such cases are confined to those accruing on the demurrer. *Dennison v. Yost*, 61 Md. 139; *Dennison v. Wantz*, 61 Md. 143; *Trego v. Skinner*, 42 Md. 426. A defendant may appeal from an order overruling his demurrer, although he has not paid the \$10.00 and costs. *Stinson v. Ellicott City Co.*, 109 Md. 111. Cf. *Gilbert v. Arnold*, 30 Md. 29; *Seebold v. Lockner*, 30 Md. 133; *Collateral Bank v. Fowler*, 42 Md. 393.

<sup>5</sup> **Costs in equity are in discretion of court.**—While costs at law follow the judgment, costs in equity rest in the sound discretion of the court from the exercise of which no appeal will lie. *Mears v. Moulton*, 30 Md. 142; *Hamilton v. Schwehr*, 34 Md. 107; *Griffith v. Dale*, 109 Md. 697, 703; *Milner's Equity*, sec. 278. See note 8 to 3 Hen. 7, c. 10.

Even in a divorce suit where the wife is usually a favored party, the